IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 1265 of 2001(B)

AGAINST JUDGMENT DTD. 02/08/2001 OF W.C. COURT, THRISSUR IN W.C.C. NO. 2/98.

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APPELLANT/ OPPOSITE PARTY NO.2:

THE NEW INDIA ASSURANCE CO. LTD.,
1ST FLOOR, PAULSON BUILDING,
SOUTH KALAMASSERY, COCHIN -22,
REPESENTED BY ASSISTANT MANAGER,
REGIONAL OFICE, KANDOMKULATHY TOWERS,
M.G. ROAD, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL.

RESPONDENTS/ APPLICANT & OPPOSITE PARTIES 1 & 3:
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1. **WILSON, S/O. GEORGE,**
   PADUTHURTHY HOUSE,
   PINDANI DESOM,
   PUTHENCHIRA-THEKKUMMURI VILLAGE,
   PUTHENCHIRA P.O.,
   MUKUNDAPURAM TALUK.

2. **P.K. MURALI KUMAR,**
   MANAGING PARTNER,
   FRIENDS TRANSPORT COMPANY,
   11/100 AMBALAMUGAL,
   COCHIN - 682 302.

M.F.A. NO. 1265/2001:

3. RAMESH CHAKHONI, PARTNER,
RAMESHKUMAR & CO.,
AMBALAMUGAL, KOCHI.

R1. BY ADV. SRI.P.V.BABY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 8650/2001 IN M.F.A. NO. 1265/2001

DISMISSED

SD/- J.B.KOSHY, JUDGE.

03/12/2007. **SD/- K.T.SANKARAN, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.1265 OF 2001 ()

Dated this the 3rd day of December, 2007

J U D G M E N T

KOSHY,J.

First respondent claimant in this appeal filed an application for compensation before the Commissioner for Workmen's Compensation contending that during the course of employment on 10.1.1996, he met with an accident and he suffered serious injuries. He was driving a heavy vehicle at the time of accident. He had fracture of lower end of right tibia and fibula. Doctor assessed 30% physical disability and assessed 90% loss of earning capacity and awarded compensation of Rs.2,30,656/- with 12% interest from the date of application till its deposit. Under Section 4(1)(c)(ii) of the Workmen's Compensation Act, in the case of injury which is not a scheduled injury, compensation has to be assessed by the Commissioner on the basis of the Medical practitioner. Medical practitioner has to assess compensation considering the loss of earning capacity fixed under the schedule in relation to injuries

specified in the section as provided and explained to Section 4(1)(c)(ii) and medical practitioner cannot assess loss of earning capacity arbitrarily even if the leg below knee is injured is only 50%. Tribunal has calculated compensation for 90% which is not at all correct. A copy of this judgment should be sent to the Medical Department. Even if loss of earning capacity is assessed as 50%, compensation payable will be only Rs.1,28,142/- (2,000 x $^{60}/_{100}$ x 213.57 x $^{50}/_{100}$). If 12% interest is calculated from the date of accident (10.1.1996) till the date of deposit (25.9.1998), which itself is on the wrong side, the amount to be awarded including interest is below Rs.2 lakhs even if compensation is assessed for 50% loss of earning capacity. When stay petition came up for hearing, claimant was allowed to withdraw Rs.2 lakhs. In the circumstances of the case, we allow the appeal and fix the total compensation including interest and costs at Rs.2,00,000/-. So no further amount need be disbursed to the claimant and total amount deposited by the Insurance company was Rs.3,58,812/-. Therefore excess amount should be returned to

the Insurance company forthwith. With the above observations this appeal is allowed.

J.B.KOSHY, JUDGE

K.T.SANKARAN, JUDGE

prp

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.NO.1265 OF 2001 ()

J U D G M E N T

3rd December, 2007